

MASS. AGL. 2: ST 29/2

UMASS/AMHERST



312066016588729

---

# Status Report on the Implementation of the Equal Employment Opportunity Agreement at the MBTA

---

GOVERNMENT DOCUMENTS  
COLLECTION

SEP 01 1998

University of Massachusetts  
Depository Copy



**Scott Harshbarger**  
Office of the Attorney General

April 28, 1998





*The Commonwealth of Massachusetts*  
*Office of the Attorney General*  
*One Ashburton Place*  
*Boston, MA 02108-1698*

SCOTT HARSHBARGER  
ATTORNEY GENERAL

(617) 727-2200

April 28, 1998

To the Citizens of the Commonwealth:

It has been a little more than a year since the signing of an historic, court enforceable agreement to change the way the MBTA treats its workers. I'm proud of the significant progress that has been made, but I also am concerned that some of our objectives have not been met.

This status report details how the changes imposed by that agreement have greatly enhanced equal employment opportunities at the T. For example, there has been a significant increase in promotional opportunities for minorities and women. Civil rights protections, fair employment training and diversity programs have been dramatically improved. Worker complaints of discrimination and harassment are now being taken more seriously.

The report also clearly shows that the MBTA, as one of the state's largest public employers, still has work to do to eliminate and effectively prevent discrimination, harassment and retaliation based on the race, color, ancestry, sex, sexual orientation, religion, age and disability of its employees.

Some delays and violations in implementation of the agreement have slowed down the expected progress. Too few supervisors and mid-level managers have been designated or trained to receive worker complaints. Not all job openings have been posted. It took too long for the agency to distribute its anti-discrimination policies to its employees. Instances of racially hostile graffiti were initially met with indifference by some supervisors.

I firmly believe that the agreement signed last February should serve as a model for all public agencies in our Commonwealth and throughout the country. But as historic as the agreement was and remains today, neither it nor the law alone will dismantle the culture of bigotry and indifference that entrenched itself within the MBTA for decades.

My parents taught me that civil rights was more than just a set of laws. My father, in particular, made issues of equal opportunity a central theme of his work as chaplain at Penn State





and constantly discussed the power that a community could wield in perpetuating or destroying notions of bias and inequality.

His teachings were brought home for me in the summer of 1964 when I began a year of service in East Harlem a few weeks after riots devastated the neighborhood, and citizens were struggling against overwhelming odds to wage a war of social activism for equal access to health care, legal advice, housing, education and jobs.

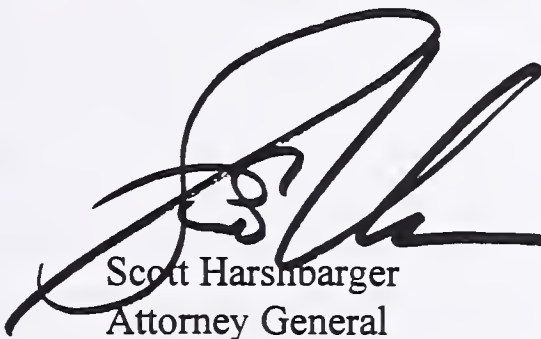
I drew a number of lessons from these experiences, and from my professional career in the law and as a prosecutor. One of the most important is to never underestimate the role that individuals and governmental leadership can play when it comes to making a difference in the quality of people's lives, promoting fairness and decency, and ensuring equal justice.

Last year's agreement with the MBTA was designed to change the direction of an organization that had either ignored or flouted the basic principles of human relations for so many years that discrimination, harassment and retaliatory conduct had become common place.

I'm pleased that the foundation has been laid for making those reforms a reality. But the status report shows that we are not there yet.

The ultimate goal of creating a workplace of dignity, respect, inclusion and equal opportunity at the MBTA will only be achieved through complete compliance with all of the agreement provisions, and the good faith, relentless efforts of the T, its managers and its supervisors to change the agency's core values.

The continued oversight and commitment of my office, in partnership with Concerned Minority Employees at the T, other MBTA employees, labor organizations and management will be required to ensure this historic opportunity for progress is not squandered.



Scott Harshbarger  
Attorney General



April 28, 1998

**OFFICE OF THE ATTORNEY GENERAL'S ONE-YEAR ANNIVERSARY  
REPORT ON THE STATUS OF THE IMPLEMENTATION  
OF THE EQUAL EMPLOYMENT OPPORTUNITY AGREEMENT**

**A. INTRODUCTION**

On February 6, 1997, following a 16-month-long investigation, the Office of the Attorney General of the Commonwealth of Massachusetts entered into an Equal Employment Opportunity Agreement (the "Agreement") with the Massachusetts Bay Transportation Authority ("MBTA" or "T"), along with 26 of the T's 27 labor organizations. The Agreement was the culmination of an extensive investigation into allegations of race and gender-based discrimination, harassment and retaliation at the MBTA. The Concerned Minority Employees ("CME") and members of the T's labor organizations were instrumental both in bringing many of the problems encountered by minorities and women employed at the T to the attention of this Office, and in providing ideas to the Attorney General for addressing and remedying them.

The Attorney General's investigation identified widespread discrimination, harassment and retaliation at the T, and system failures which allowed such conduct to continue largely unabated for many years. Over the course of approximately six months in 1996, the T and this Office developed entirely new systems intended to enable the T to effectively identify, investigate and address such conduct at the T. The end-product was the Agreement, a historic, first-of-its-kind document in which a state agency in Massachusetts agreed to a comprehensive plan, monitored by the Attorney General's Office, designed to ensure workers' civil rights.

The Agreement with the T includes provisions intended to remedy the major system failures identified during the course of this Office's investigation and provisions designed to overcome a discriminatory culture, institutionalized over years of inaction or ineffectiveness.

In the first year of the Agreement, specific, documented steps were taken by the T to lay the groundwork for overcoming the ingrained culture which had allowed discriminatory practices to proliferate for years. These included: (1) the comprehensive revamping of a largely dysfunctional complaint investigative process; (2) the creation of a viable and effective system of informal resolution of less serious allegations of discrimination and harassment; (3) the posting of job openings to permit greater promotional opportunities for minorities and women; (4) the promotion of minorities and women in increasing numbers at all job levels, and most importantly, within supervisory and management positions; (5) the development and implementation of an effective, day-long fair employment training program for both supervisors and employees; (6) institution of a fair employment orientation program for new employees; and (7) significant progress in the development of a computerized tracking system to monitor civil rights violations and to identify pattern offenders and problem job sites (the target date for implementation is by July 1998).



Digitized by the Internet Archive  
in 2012 with funding from  
Boston Library Consortium Member Libraries

<http://archive.org/details/statusreportonim00mass>



All parties to the Agreement recognized at the outset that neither effective new systems nor the T's complete compliance with all provisions of the Agreement would eliminate the longstanding discriminatory culture at the T in the short term. It was understood that only through the good faith, long-term concerted efforts of the T, its managers and supervisors, and its Department of Organizational Diversity ("OD") -- in cooperation with its minority and women employees and labor organizations -- would the mutual goal of the parties be achieved.

Some delays in implementation and violations of some provisions of the Agreement by the T have slowed the anticipated progress, as will be discussed in greater detail below. When delays or violations have been identified, the Office of the Attorney General has expressed its deep concern and warned the T that further non-compliance would not be tolerated. On those occasions, this Office has sought and obtained the T's commitment to quicken its pace of compliance and to ensure that identified violations of the Agreement are not repeated.

This Office's continued close working relationships with CME and the labor organizations of the T have been instrumental to this Office in addressing identified concerns or problems with the Agreement's implementation. Complaints by some employees, including members of CME, that discrimination and harassment continue have led to frequent -- often weekly, and at times daily -- communication with the T about its compliance efforts.

Among the more public charges of continuing civil rights violations were those made by Roberta Edwards, formerly Chief Administration Officer, concerning discrimination and retaliation by high-level officials. She was terminated by the T in December 1997. (Her allegations are the subject of her legal complaint currently pending before the Massachusetts Commission Against Discrimination ("MCAD")). This Office is in the process of reviewing whether the T's alleged reason for her termination -- that she violated managerial trust by encouraging other supervisors to file discrimination suits against the T (based upon information the T says was supplied to it by other T employees) -- can be substantiated.

In thirty-eight matters, this Office has intervened with the T on employees' behalf or investigated an individual complaint brought to its attention. At times, misunderstandings about the applicability of a provision of the Agreement have been corrected, or miscommunications between the T and employees resolved. In other cases, the T has made necessary changes to its practices, modified its investigative process, altered its response, or vacated a decision. At other times, this Office has determined that no further action by the T was required under the Agreement. In two matters involving complaints from high-level management employees against certain members of the leadership team of the T, the Attorney General strongly recommended to the T that it remove the investigation from OD and retain an independent investigator to perform the internal investigation. In both cases, the T did so.

As anticipated, even with some delays and violations of agreed-to-provisions, the Agreement has begun to have a significant impact on the practices and culture of the T.



## **B. SUMMARY OF IMPLEMENTATION**

The following is a summary of the status of implementation with respect to several key provisions of the Agreement.

### **1. Posting of Job Openings**

#### **a) Pre-Agreement Investigative Findings**

The investigation found that most promotional positions and job opportunities at the MBTA were not posted, and were filled before employees were publicly notified of them. As a result, minorities, women and other employees at the T were denied employment opportunities, as they were unable to compete for jobs for which they were qualified.

#### **b) The Agreement's Requirements**

The Agreement required that the T post all permanent job vacancies below the level of executive management personnel. The provision was included in the hope and expectation that posting would increase job and promotional opportunities for minorities and women at every level of the T.

#### **c) Key Areas of Progress**

- \* Posting of over four-fifths of all non-executive level job openings, and announcement of jobs through a telephone job line
- \* Significant increase in promotional opportunities for minorities and women at the T
- \* Promotion of 61 minorities and 54 women out of 197 total promotions
- \* Promotion of 6 minorities and 6 women out of 24 promotions to positions with a high level of authority
- \* Hiring of 106 minorities and 85 women out of 233 newly-hired employees

The MBTA's recent promotional practices have been among the most positive, concrete steps taken to benefit women and minorities employed at the T. Increasing numbers of minorities and women have been selected for promotions at the T, including positions of substantial authority. Minority and women supervisors at the T have played, and will continue to play, a critical role in the implementation of the Agreement and in overcoming the historically





discriminatory culture at the T.

In terms of total promotions since the Agreement was signed on February 6, 1997, minorities and women were promoted in an even higher proportion than their percentage in the workforce. Minorities received 31% of all promotions, compared with a workforce composition of 29.8%, while women received 27.4% of all promotions, compared with a workforce composition of 22.3%.

Importantly, minorities received 25% (6 of 24) of promotions within the Official/Administration job category, the highest job category under Equal Employment Opportunity Commission ("EEOC") guidelines. Minorities received 20.3% (12 out of 59) of promotions within the Professional job category, the next highest EEOC job category.

Also of great significance, women received 25% (6 out of 24) of promotions within the Official/Administrator job category in the first year of the Agreement (which increased their composition in the workforce within that job category from 21.3% at the end of 1996 to 29.3% at the end of 1997). Women also received 32.2% (19 out of 59) of promotions at the Professional level.

In the first year of the Agreement, minorities comprised 45.5% (106 out of 233) and women 36.5% (85 out of 233) of newly-hired employees.

There were approximately 150 promotions made since the posting requirement went into effect on April 6, 1997. Twenty-two of the promotions were exempt from the Agreement's posting requirement as executive level positions. Approximately 105 of the remaining 128 promotions, or approximately four-fifths, occurred as a result of posting. Of these, 28.5% (30 out of 105) went to minorities and 28.5% (30 out of 105) went to women. Four promotions occurred as a result of negotiated settlements of legal claims pending in the MCAD or in court, without being posted, and with the consent of this Office. The remaining 19 promotions occurred without the required posting.

**d) Delays and Failures in Implementation**

- \* Failure to post 19 of the 129 positions required to be posted
- \* Misrepresentation in monthly reports that the T was in compliance with the posting requirement

Over the summer of 1997, the MBTA filled 19 positions in connection with a reorganization of the Engineering and Maintenance Department, did not post these positions, and represented in its monthly reports during this period that the T was in compliance with the posting requirement. This Office discovered the breach after it began scrutinizing the effect posting was having on promotional opportunities for minorities and women. The T claimed after



the fact that it felt that it was necessary to fill these positions without posting in order to break-up the former Engineering and Maintenance Department, a hotbed of complaints, as quickly as possible, and to increase job opportunities for minorities and women in the successor departments. Minorities made up 26.3% (5 out of the 19) but women only 10.5% (2 out of the 19) of the positions filled without posting. This Office strongly criticized the T for the misrepresentation in its reports. It warned the T that any future violations of the posting requirement or misrepresentation in its reports would not be tolerated. The T has assured this Office that there will be no recurrence.

(In the past two weeks, this Office was notified by one of the labor organizations about the T's use of a lottery to recruit applicants for certain entry level job openings, without also posting the openings. This Office is presently addressing this issue with the T.)

## **2. Complaint Investigation Procedures**

### **a) Pre-Agreement Investigative Findings**

The investigation found that the T's internal investigations were fraught with long delays, were often incomplete and poorly-pursued, were performed by largely untrained investigators, and were insufficiently documented.

The investigation also found that internal investigations were being suspended when an employee also filed an external legal complaint, and that the T was not investigating external complaints that were not also filed internally in order to determine whether corrective action was necessary.

The investigation found that some employees lacked access to the internal complaint procedure administered by OD out of the T's Executive Offices, either because of the shift or location to which they were assigned, or because they could not leave a job site to file a complaint with OD.

### **b) The Agreement's Requirements**

One of the central reasons for entirely revamping the complaint and investigatory procedures of OD was to develop employees' trust in, and cooperation with, a department and complaint system in which many employees lacked confidence.

The Agreement required the T to modify its existing investigative practices so that all complaints of discrimination, harassment and retaliation, whether filed at OD or at the MCAD, were thoroughly and professionally investigated by the T under the strict time lines specified in the Agreement, with documentation of its investigative steps and findings.





The Agreement authorized the T to discipline parties or witnesses who refused to cooperate with an investigation without good cause.

The T was also to designate at least 54 specially-trained supervisors (who work at all 18 principal job sites and on all 3 shifts) to receive formal and informal complaints from employees, in order to assure that the newly-revamped complaint process was accessible and available to all employees regardless of the sites and shifts to which they were assigned or their ability to leave their job sites.

c) **Key Areas of Progress**

- \* Major modification of complaint process to improve protection of workers' civil rights
- \* General compliance by OD with new investigative standards
- \* Development of detailed written OD investigatory protocols
- \* Extensive professional development and fair employment training of OD investigators
- \* Institution of successful informal complaint resolution process
- \* Elimination of lengthy delays in investigations
- \* Cooperation from employees with investigations
- \* Significant investment in OD budget and staff

The T has extensively trained its OD investigative staff and made wholesale changes to the internal complaint process to better ensure fair, timely and thorough investigations.

From February 6, 1997 to February 6, 1998, OD received approximately 194 complaints. Of these, 121 alleged civil rights violations (the remaining 73 solely alleged violations of the "Dignity in the Workplace" policy, a policy which prohibits conduct which, while not illegal, is offensive and which in some cases escalates into civil rights violations). The number of civil rights complaints is a significant increase from prior years: it represents a 70% increase from 1995 levels and a 133% increase from 1996 levels. The increase suggests greater awareness among employees about their rights and the complaint procedure, and increased confidence in the revamped OD.

There have been 51 MCAD complaints filed by current or former employees in the year since the signing of the Agreement, 33 of which alleged post-Agreement conduct. In 1995, 59



such complaints were filed, and in 1996, 76 such complaints were filed. (These figures do not include complaints filed by non-employees, e.g., passengers, customers and applicants.)

During the first four months of implementation, while OD was adjusting to its new investigatory procedures, it failed to complete approximately 15 investigations within the strict time lines specified in the Agreement. Seven exceeded the time lines by under a week, 5 exceeded the time lines by between one and three weeks, and the remaining 3 exceeded the time lines by between thirty-five and sixty-five days.

OD's more recent track record in completing investigations within the Agreement's time lines has improved significantly, with only 6 cases completed late between June and September 1997, and none completed late between October 1997 and the one-year anniversary of the Agreement on February 6, 1998.

In 26 of the 27 cases of less serious forms of harassment and discrimination brought to the attention of OD, the parties successfully resolved the complaint through the informal resolution process.

The T reports that over the course of the first year of the Agreement, witnesses and parties cooperated with its internal investigations, providing information and documents to OD as requested.

The budget for OD for FY'98 is \$1,434,511, up from \$842,712 for FY'97, a 70% increase from the previous fiscal year. Its staff for FY'98 is 24, up from 18 for FY'97, a 33% increase. While resources alone will not solve the T's problems, this commitment does suggest that the T has recognized the need to take civil rights complaints seriously and to allocate appropriate staff and resources toward investigating and responding to them.

**d) Delays and Failures in Implementation**

- \* Failure to designate 54 supervisors to receive complaints
- \* Discouragement of filing of complaints by some OD staff in the spring 1997
- \* Delay of OD investigation into some racially hostile graffiti

The T has still not designated any of the supervisors who will receive formal and informal complaints, citing organizational changes as the reason. This violation is a major failure, since until the 54 supervisors are designated and trained and employees are notified who they are, there will not be full access by all employees to the complaint process. The ability of some employees to file a complaint has continued to be limited by their shifts, job site assignments, and ability to leave the job site, a problem identified during the course of this





Office's investigation. This Office has communicated its very strong displeasure with the T's failure to designate and train senior supervisors in this role a year after the Agreement was executed. In response, the T has committed itself to designating and training these supervisors no later than June 1998.

In addition, during the spring 1997, this Office received reports from CME and others, which this Office conveyed to the T, that certain investigators within OD were allegedly discouraging some employees from filing complaints with OD. The T agreed to discuss these reports with its OD investigators immediately. This Office has received no further complaints.

OD also delayed its investigation into the posting of some racially-hostile graffiti, even after a series of communications by this Office.

### **3. Corrective Action and Discipline**

#### **a) Pre-Agreement Investigative Findings**

The investigation found that often, complaints were not addressed or investigated, violators were not punished, and appropriate corrective action was not taken.

#### **b) The Agreement's Requirements**

The Agreement requires the T to take prompt and appropriate corrective action calculated to stop illegal conduct and deter potential violators.

#### **c) Key Areas of Progress**

- \* Substantiation by OD of 36 complaints, including 9 which allege discrimination and harassment

The T found 4 complaints of discrimination and 5 complaints of harassment filed in the year since the Agreement to be substantiated, and found cause with respect to 27 violations of the "Dignity" policy (which can serve as precursors to acts of discrimination and harassment). It has taken corrective action in each civil rights case, including 3 suspensions, 1 suspension with a demotion, and 1 suspension with a transfer.

#### **d) Delays and Failures in Implementation**

- \* Perception that in some cases, OD erred in failing to find cause or impose appropriate discipline

This Office has received a few complaints from employees and CME regarding OD's failure to find in the complainants' favor and take appropriate disciplinary action. Such matters



were reviewed with the T. In those cases, this Office either requested that OD perform further investigation or determined that the T had not acted in violation of the Agreement. Such disappointment by these complainants and CME has contributed to the perception that harassment and discrimination continue unabated at the T.

#### **4. Anti-Discrimination/Harassment Policy & Training**

##### **a) Pre-Agreement Investigative Findings**

The investigation found a lack of awareness by many employees about their rights and duties under the civil rights laws, and about their right to file a complaint internally as well as externally with the MCAD and EEOC.

##### **b) The Agreement's Requirements**

To increase the number of workers coming forward and to deter future illegal conduct, the Agreement required that employees be made fully aware of their civil rights and responsibilities.

Under the Agreement, the T was to distribute its zero tolerance policies prohibiting harassment, discrimination and retaliation to all employees, post the policies and train all employees (within two years) and supervisors (within nine months) about civil rights and the T's zero tolerance policies.

##### **c) Key Areas of Progress**

- \* Posting of notices of employees' civil rights soon after execution of the Agreement
- \* Extensive training of the 157 senior managers of the T about the fair employment laws and the Agreement
- \* Required fair employment training of 1,600 of the 6,300 employees of the T's workforce
- \* Finalization and distribution to employees of zero tolerance policies and complaint procedure
- \* Tenfold increase in the training budget to provide the required fair employment training of employees

Within the first month after the Agreement was signed, the T posted the notices of employee rights under the civil rights laws as required.





The T has made progress in providing extensive fair employment training to its employees. Approximately one quarter of its approximately 6,300 employees have received training about their rights and duties under the civil rights laws, the Agreement and the T's zero tolerance policies. Specifically, over 1,300 of the MBTA's employees were trained either through New Hire or Civil Treatment for Employees Training (the latter of which is a full-day program) -- both of which were begun in July 1997 -- and 306 were trained through the Managers' Policies and Procedures Training, another full-day program solely for supervisors, which began in December 1997. This Office also played a leading role in the training of 157 of the T's senior managers after the Agreement was signed, emphasizing the special role and responsibilities of these managers in ensuring the successful implementation of the Agreement. With respect to the zero tolerance policies and internal complaint procedures, MBTA General Manager Robert Prince signed off on these policies in early 1998, and the policies were distributed to employees in March 1998.

The MBTA increased its training budget by almost \$1 million from \$117,200 for FY'97 to \$1,127,200 for FY'98, almost a ten-fold increase, to accommodate the stepped-up training required by the Agreement.

**d) Delays and Failures in Implementation**

- \* Delayed fair employment training of mid-level managers and supervisors
- \* Delay in the finalization and distribution of the T's zero tolerance policies

During the summer of 1997, this Office became aware that the T would not begin, let alone meet, its November 6, 1997 deadline under the Agreement for completing its training of managers and supervisors about their rights and responsibilities under the civil rights laws, the Agreement, and the T's zero tolerance policies. This Office expressed its displeasure to the T. The MBTA then requested an extension through the end of April 1998, indicating that the preparation of the program was taking longer than anticipated. This Office had little choice but to grant the T an extension, since at the point the delay was communicated to this Office it was clear that the T could not meet its obligation to train its supervisors by November 1997. The T was notified in writing that this Office would not tolerate further delay in implementation of this important provision of the Agreement. Indeed, the Agreement had called for expedited training of managers and supervisors precisely because of their key role under the Agreement in protecting workers' civil rights.

In addition, it was not until early 1998 that the T's zero tolerance policies and complaint procedure were finalized, and distribution did not occur until March 1998. Although some delay was anticipated because of the edits and feedback provided by this Office and the resulting need to revise the documents, distribution was delayed four to five months after this Office submitted



its edits to the T.

## **5. Compliance Monitoring**

### **a) Pre-Agreement Investigative Findings**

The investigation found that chronic offenders were not being identified, tracked or appropriately punished, and job sites with pervasive discrimination and harassment were not being identified for purposes of taking action and providing specialized training.

### **b) The Agreement's Requirements**

The Agreement required the T to establish a computerized tracking system to enable it to identify patterns of violations of the anti-discrimination laws by particular employees or supervisors, and to identify locations where such conduct was occurring and where specialized training was therefore needed. The system was also to be used to ensure equal treatment of all workers in promotion, assignment and discipline. In the interim, the T was required to manually review and monitor complaint data for patterns of misconduct by employees and at particular job sites, and to take appropriate action where patterns were identified.

### **c) Key Areas of Progress**

- \* Major progress in developing computerized monitoring system
- \* Manual identification of patterns in the interim
- \* Action to address an identified pattern at one job site

The MBTA hired an outside consultant to help it develop the computerized tracking system which is required by the Agreement, and expects the system to be operational by July 1998. The T has dedicated significant resources -- approximately \$1,800,000 -- to developing and implementing the system. In the meantime, it is manually analyzing the data. As a result of its manual monitoring efforts, the T identified and responded to a pattern of complaints in the former Engineering and Maintenance Department by dismantling the department and reorganizing it in various stages.

### **d) Delays and Failures in Implementation**

- \* Lack of specialized job site training after identification of patterns of complaints at particular job sites

The T has not conducted any specialized training at specific job sites where a comparatively high incidence of complaints has been identified, notwithstanding that this Office





recommended that a training be conducted at a particular site which had been the subject of complaints. Besides being required under the Agreement and necessary to correcting problems at difficult job sites, such training would tend to increase the confidence of employees that the T has “gotten the message” and that progress is being made.

**6. Supervisory Responsibility**

**a) Pre-Agreement Investigative Findings**

The investigation found that in many cases supervisors failed to respond to complaints from employees, received and resolved complaints without notifying OD, and violated fair employment law in their handling of them. As a result, complaints were not being monitored for patterns, and there was no oversight of supervisors’ responses to them.

**b) The Agreement’s Requirements**

Under the Agreement, supervisors were made accountable for identifying, addressing and reporting civil rights violations and complaints of violations. The Agreement requires reporting by supervisors to OD of complaints or allegations of discrimination and harassment and of racial, religious, national origin or sexually charged or hostile graffiti at T facilities of which they become aware. It also requires the training of supervisors about their reporting duties within nine months of the execution of the Agreement.

Within ninety days of the signing of the Agreement, the T was also required to designate supervisors and notify them in writing that they had special reporting responsibilities under the Agreement.

**c) Key Areas of Progress**

- \* Notice to supervisors of responsibility to report violations and of potential for serious disciplinary action for failing to do so
- \* General compliance by supervisors with duty to report civil rights violations and to forward complaints to OD
- \* Referral of complainants to OD to enable it to identify pattern offenders and problem job sites

To date, this Office is aware of specific instances in which supervisors have reported alleged civil rights violations to OD. Supervisors are also generally forwarding complaints and referring complainants to OD for investigation.





d) **Delays and Failures in Implementation**

- \* Failure of supervisors to report several instances of racially hostile graffiti
- \* Delay by OD in its investigation into the posting of some racially hostile graffiti
- \* Delay in written designation and notification of supervisors with special reporting responsibilities
- \* Failure by some supervisors to report possible violations

The T became aware of several instances of racially hostile graffiti only because of inquiries made by this Office, based upon information provided to it by CME. OD should have already been made aware of such instances by supervisors at the pertinent job sites. This Office is working with the T to identify and address such violations.

The T has not formally designated supervisors in writing regarding their special reporting responsibilities under the Agreement, although it has notified them of their responsibilities in its internal complaint procedure, disseminated to all employees in March 1998, and in an October 14, 1997 letter from the General Manager to all supervisors and managers. The T plans to issue designation letters to supervisors by June 1998.

This Office has also received a few complaints that supervisors have not reported violations to OD. These incidents have been discussed with the T, and the T is presently investigating these incidents.

C. **CONCLUSION**

This Office could not effectively monitor the implementation of the Agreement without the continued cooperation of CME, representatives of the labor organizations which represent the collective bargaining units at the MBTA and other employees who have volunteered their time in offering their observations. This Office will continue to monitor the T's actions in implementing the Program and to offer its assistance to the T in its efforts to eradicate unlawful discrimination, harassment and retaliation from its workplace. It expects that the T will make continuing progress in putting in place the systems required by the Agreement to make the T's promise of non-discrimination and non-harassment real. It is also hoped that the types of systems required by the Agreement, and the monitoring processes undertaken by this Office, will inspire the Acting Governor to institute similar systems and monitoring processes within other state agencies, so that all state workers are more effectively protected from civil rights violations.



April 28, 1998

## **APPENDIX**

### **OFFICE OF THE ATTORNEY GENERAL'S ONE-YEAR ANNIVERSARY REPORT ON THE STATUS OF THE IMPLEMENTATION OF THE EQUAL EMPLOYMENT OPPORTUNITY AGREEMENT**

#### **I. INTRODUCTION**

The first year of implementation of the Agreement required a significant investment of time and resources by both this Office and the MBTA. Monitoring has required a substantial portion of the time of three Assistant Attorneys General, including the Chief of the Civil Rights Division. This has included time spent in frequent communications with the T as issues have arisen, and extensive communications with the Concerned Minority Employees ("CME," a civil rights advocacy organization comprised of MBTA employees), officials of the MBTA's collective bargaining organizations, and other employees who have contacted this Office with questions and concerns relating to the Agreement. Specifically, this Office has investigated or intervened on behalf of employees, CME or a labor organization in approximately 38 matters, raising diverse issues including allegations of inadequate or unfair investigation by the Department of Organizational Diversity ("OD," the MBTA department responsible for internal civil rights investigations), failure to post job openings, promotion of individuals with a history of civil rights complaints against them, and a wide range of other issues. On its end, the MBTA has committed significant time and resources to the implementation effort, as reflected in noteworthy increases in the budgets pertaining to both OD and training in FY'98 compared with previous years, and in a significant commitment of resources to the implementation of the computerized monitoring system required by the Agreement.

Below is a detailed description of the status of the MBTA's implementation based upon a paragraph-by-paragraph review of the provisions of the Agreement. It is based on information provided by the T to this Office in its monthly reports and in other communications between this Office and the T. It is also based on information provided by CME, union officials and employees of the T who have volunteered their observations about the T's implementation of the Agreement. The description is organized by section of the Agreement.

This Appendix supplements the Report to which this Appendix is attached and is keyed to each of the specific paragraphs of the Agreement.

#### **II. IMPLEMENTATION OF AGREEMENT**

##### **Paragraph A. Introduction**

In this section, the MBTA stated its commitment to equal opportunity in employment for all its employees and applicants and its "zero tolerance" of discrimination and harassment within





its workplace. It also stated its commitment to implementing its non-discrimination policies, and to taking effective action to eradicate discrimination and harassment at the T. The T's specific obligations under the Agreement are detailed in the subsequent sections of the Agreement, which are discussed below.

**Paragraph B.            Notification to Employees of Their Rights**

**1.            MBTA's Duties**

Under the Agreement, the MBTA is obligated to notify employees of their right to be free from discrimination, harassment and retaliation under state and federal fair employment practices laws and under the T's internal policies. This obligation includes the duty to notify employees who feel they have been illegally discriminated or retaliated against or harassed that they may file a complaint with the Massachusetts Commission Against Discrimination ("MCAD") within 180 days, the Equal Employment Opportunity Commission ("EEOC") within 300 days, and/or internally. The T must post notices of employee rights under state and federal fair employment practices laws at locations where job postings and "job pick" assignments are posted. It must also provide to employees copies of its anti-discrimination policies and internal complaint procedure with their paychecks.

**2.            MBTA's Response**

**a.            Posting of Rights.** Before the MBTA posted the required information, this Office reviewed the postings. The T reports that it has posted the notices at all locations where jobs posts and "job pick" assignments are posted. Based upon concerns expressed to this Office by the T's unions and other employees that postings had been torn down at some sites, this Office asked the T to inspect the posting sites at all T facilities, re-post as necessary, and install locked display cases at facilities where there were none in order to secure the postings against theft. The T reports that it conducted this inspection and is in the process of installing glass cases at 9 locations in addition to the 39 sites with existing cases. With the addition of these 9 cases, all facilities at the T will have at least one locked cabinet for use in displaying such postings.

**b.            Internal Policies and Procedures.** This Office actively worked with the MBTA over a period of many months to finalize the T's written policies prohibiting discrimination, harassment and retaliation and setting forth its internal complaint procedures, and the related forms used by OD in implementing the complaint procedures required by the Agreement. During the spring and summer 1997, this Office suggested significant revisions to these policies and related forms to make them more accurately reflect the letter and spirit of the Agreement and the fair employment practices laws. The suggested revisions were included in the final versions. The policies notify employees of their right to be free of discrimination, harassment and retaliation under the law and under the T's internal policies, and of their right to file a complaint regarding any such conduct with the MCAD, the EEOC, and/or internally. They



also provide detailed information about the T's internal complaint process. The T finalized the policies in early 1998 and distributed them in March 1998, 13 months after the Agreement was signed.

**Paragraph C.            Employee Education and Training**

**1.            MBTA's Duties**

Under the Agreement, the MBTA is required to train all employees concerning their rights, responsibilities and obligations under the state and federal fair employment practices laws, the T's internal policies against discrimination, harassment and discrimination and the internal complaint procedure. New employees are to be given an orientation on these subjects within a reasonable period of their being hired. Non-supervisory employees are to be trained within two years of the Agreement (or by February 6, 1999), with refresher trainings performed once every two years thereafter. Supervisory employees are to be trained within nine months of the Agreement (or by November 6, 1997). The T is also to conduct additional specialized trainings at job sites where a pattern of discrimination, harassment or retaliation has been identified.

**2.            MBTA's Response**

**a.            New Hire Orientation.** The MBTA began conducting orientations for new employees on these subjects (in a workshop entitled "New Hire Orientation") in July 1997, and reports that it has continued, and will continue, conducting these orientations monthly for new employees. The Orientation is a half-day introduction to the T, its structure, and employee benefits which includes several sections explaining the T's policies against unlawful discrimination, harassment and retaliation, the internal complaint procedure, and the Agreement. The program was developed in-house. This Office suggested certain changes to the Orientation, including highlighting the sections about civil rights and the internal complaint process by placing them toward the beginning of the training. A representative of this Office monitored the first session in July 1997. Overall, the Orientation was found to effectively cover the major areas required to be covered under the Agreement. Approximately 153 employees have attended the New Hire Orientation out of the approximately 233 employees hired during the first year of the Agreement. The discrepancy between the number of employees hired and the number provided Orientation is attributable to a period of approximately 60 days between each new employee's date of hire and attendance at the Orientation.

**b.            Training of Non-Supervisory Employees.** The MBTA began conducting training on these subjects for non-supervisory employees (in a workshop entitled "Civil Treatment for Employees," or "CT/E") in July 1997, and reports that it has, and will, continue such trainings on an ongoing basis in anticipation of meeting its February 1999 deadline under the Agreement. A consultant, Employment Learning Innovations, developed the program and trained and certified in-house personnel to conduct it. This Office reviewed certain aspects of the training program as it was in the development stage and provided feedback. Representatives





of this Office monitored the first session in July 1997, and found the training to effectively cover the major areas required to be explained to employees under the Agreement. The all-day program reviews the T's policies prohibiting discrimination, harassment and retaliation, some of the forms such conduct may take, appropriate responses to it, and the procedures governing internal complaints. In the first year of the Agreement, 1,175 of the 5,741 non-supervisory employees who are to receive CT/E training have attended it.

c. **Training of Supervisory and Managerial Employees.** In June 1996, prior to the Agreement, the MBTA held a training for its 157 senior level managers to review the requirements of the fair employment practices laws. Shortly after the signing of the Agreement, on February 25, 1997, a second training, in which members of this Office played a leading role, was held for the 157 senior level managers to explain the provisions of the Agreement and the specific responsibilities it creates for managers and supervisors, and to again review the requirements of the fair employment practices laws.

With respect to the training program for the balance of managers and supervisors, the "Managers' Policies and Procedures Training" was developed in-house. The T used a consultant, The Redon Group, to develop a videotape dramatizing examples of discrimination, harassment and retaliation to assist in teaching employees about the forms such illegal conduct may take and to provoke discussion about possible responses. This Office reviewed the proposed training program and provided feedback, and the program was launched in November 1997. A representative of this Office monitored a session in December 1997 and found it to be an effective all-day program which reviews the responsibilities of supervisors and managers with respect to their treatment of employees and their response to possible discrimination, harassment and retaliation (although feedback from CME has included a suggestion that the training place greater emphasis on the reporting responsibilities of supervisors and managers). In the first year of the Agreement, 306 managers and supervisors have attended this training, out of the 741 managers and supervisors who are to attend it.

The training of managers and supervisors is running well behind the schedule established by the Agreement. During the late summer 1997, it became clear to this Office that the T would not meet the Agreement's November 6, 1997 deadline for the completion of the training of this group of employees. This Office raised the issue with the T, and in the fall 1997 the T formally requested an extension through the end of April 1998, stating that the preparation of the program was taking longer than anticipated. The T also communicated to this Office that it did not anticipate beginning the training until early December 1997, after the deadline for completion had expired. The Office granted the extension, given that it had become impossible for the T to meet the deadline. However, this Office expressed its deep concern about the delay given the key role of managers and supervisors under the Agreement in identifying and reporting civil rights violations and the need for them to be educated about their role. Indeed, the Agreement had called for expedited training of managers and supervisors -- it had set a nine-month deadline for the completion of such training, in contrast to the two-year deadline set for other employees -- precisely for this reason.





d. **Special Targeted Job-Site Training.** The MBTA did not conduct any specialized training at specific job sites where a comparatively high incidence of complaints had been identified, notwithstanding that this Office recommended that a training be conducted at a particular site which had been the subject of complaints. Besides being required under the Agreement and necessary to the correction of problems at difficult job sites, such training would tend to bolster the confidence of employees in the T's dedication to eradicating violations of the fair employment practices laws.

**Paragraph D.        Reporting Procedures**

**1.        MBTA's Duties**

Under the Agreement, the MBTA is responsible for reasonably assuring that allegations of illegal harassment, discrimination and retaliation are reported to OD. It is required to encourage employees to report such conduct to OD. It must also require supervisors who witness or become aware of such conduct to report it to OD, and to report racial, religious, national origin or sexually-charged or hostile graffiti or caricature to both OD and the MBTA police.

**2.        MBTA's Response**

a.        **Non-Supervisory Employee Reporting.** The MBTA encourages employees to report alleged illegal harassment, discrimination and retaliation in the New Hire Orientation and in the CT/E training (see Section C above), and also in its written internal complaint procedure, which it distributed to all employees in March 1998.

b.        **Supervisory and Managerial Employee Duty to Report.** With respect to the reporting obligations of supervisors, the 157 senior level managers within the MBTA were notified of their obligations in a seminar held on February 25, 1997, in which this Office played a leading role. The remainder were notified through distribution of an October 14, 1997 memorandum from General Manager Robert Prince reminding them of their reporting responsibilities, and through the March 1998 distribution of the T's written internal complaint procedure, which delineates supervisors' responsibilities in detail. They are also being notified of their duties in the Managers' Policies and Procedures Training, although the T has fallen well behind schedule in completing this training (see Section C(2)(c) above).

c.        **Graffiti/Caricature.** As of the one-year anniversary of the Agreement, there were approximately 30 incidents involving racial, religious, national original or sexually-charged or hostile graffiti or caricature. The MBTA reports that it has photographed such graffiti, and has investigated, and continues to investigate, such incidents to identify the perpetrators (although to date, it has been unable to do so). Many of these incidents were brought to the T's attention by supervisors.



However, in a lapse in the supervisory reporting system required by the Agreement during the summer of 1997, there were several postings at non-public job sites by an organization referring to itself as the National Association for the Advancement of White People ("NAAWP"), including several which may properly be characterized as racially hostile. This graffiti was brought to the T's attention in the first instance by this Office, based upon reports from CME. This Office has expressed its concern about the slow pace of OD's investigation into such postings. The T has responded by beginning to draft internal content-neutral guidelines which will govern postings by employees and which will take into consideration their First Amendment rights. It will provide to this Office a draft for its review. This Office has suggested to the T some items the policy might appropriately include, such a prohibition on graffiti which creates or encourages an unlawful hostile environment, versus that which articulates a legitimate and protected expression of views. This Office recommended to the T that given the racially hostile nature of several of the postings, the T issue a clear written statement of management disapproval of the postings. The T has not done so (although in press reports, General Manager Prince was quoted as disapproving of the postings).

**Paragraph E.            Complaint Procedures**

**1.            MBTA's Duties**

Under the Agreement, the MBTA is responsible for establishing, implementing and maintaining an effective procedure to identify and rectify unlawful harassment, discrimination and retaliation. This duty includes the following components:

**a.            Notice to Employees of Right to File Outside Complaint.** The MBTA must notify complainants of their right to file a complaint of unlawful discrimination, harassment or retaliation with the MCAD within 180 days and the EEOC within 300 days, and to warn them that the statutes of limitation are not tolled by their having filed a complaint internally. It must notify them in writing that they will not be retaliated against for cooperating with OD in an investigation, but may be disciplined for providing false information or for filing a complaint in bad faith.

**b.            Internal Complaint and Investigation Procedures.** The MBTA must investigate and make a determination with respect to complaints of harassment or retaliation within 14 days, or within 45 days if it has good cause for requiring additional time and notifies the complainant of its need for additional time. It is obligated to investigate and make a determination with respect to complaints of discrimination within 60 days, or 120 days if it has good cause for requiring additional time and notifies the complainant of its need for additional time. In investigating complaints, it must interview the complainant, the alleged wrongdoer, and all available witnesses, request written statements from them, and provide copies of the statements to the individuals who made them upon their request. It must review relevant documents. It may discipline employees who fail to cooperate in an investigation. It must maintain written records concerning each complaint and its factual findings, final determination,





and any corrective action taken. It must designate one or more employees within OD to assist complainants through the complaint process.

**c. Use of Qualified Investigators.** The MBTA must use qualified investigators who have been trained in the anti-discrimination laws, and must provide to this Office the syllabus and training materials pertaining to such trainings.

**d. Designation of 54 Supervisors Responsible for Taking Complaints.** There must be a designated supervisor available at all job sites and shifts in order to make the complaint procedure accessible to all employees regardless of their shift, location or ability to leave the job site. The MBTA is required to designate at least 54 supervisors (which would include one at each of the T's 18 principal job sites and one on each of the T's 3 shifts) to receive civil rights complaints and to assist complainants.

**e. OD Investigation When Employee Files Outside Complaint.** The MBTA must investigate civil rights complaints filed externally with the MCAD, EEOC or in court within the same time frames specified for internal complaints. It must also review any external civil rights complaints pending as of the signing of the Agreement within 120 days for the purpose of determining whether further corrective action or discipline is required.

## **2. MBTA's Response**

**a. Notice to Employees of Right to File Outside Complaint.** Employees are informed of their right to file a complaint with the MCAD within 180 days and the EEOC within 300 days in the MBTA's written internal complaint procedure and anti-discrimination policies, which, after some delay, were distributed to all employees in March 1998. The internal complaint procedure also informs employees that they may be disciplined for filing a complaint in bad faith or for providing false information in connection with an investigation. Participants in the OD process are advised in such policies and procedures and in OD's complainant, respondent and witness acknowledgment forms (which they are asked to sign) that they will not be retaliated against for filing a complaint or assisting in an investigation. The T reports that parties and witnesses have cooperated in providing information requested by OD in connection with its investigations, and that it is not aware of any instance in which OD has been intentionally provided with false information.

**b. Internal Complaint and Investigation Procedures.** The MBTA reports that it is maintaining required records and has implemented the investigatory techniques required by the Agreement (i.e., interviewing the complainant, the respondent and all available witnesses, requesting written statements from them, providing copies to the person making the statement upon request, and reviewing any relevant documents and other evidence).

In the spring 1997, this Office received reports from CME and others that certain investigators within OD were discouraging some employees from filing complaints. Several



meetings between the T and this Office were held to address the reports, and this Office has not received information from sources suggesting any recurrence.

To the T's credit, the T agreed in the spring 1997 and again in the winter 1997 to this Office's suggestion that it retain independent investigators in two different cases raising charges against high-level officials at the T, in order to obviate any perception that OD was not conducting a neutral investigation. However, this Office became aware that in both cases, the outside investigator had not completed the investigation or made findings as required by the Agreement. This office has urged the T to correct the deficiencies, and the T has agreed to do so.

Between February 6, 1997 and February 6, 1998, OD received approximately 194 internal complaints. Of these, 121, or 62%, alleged civil rights violations. The remaining 73, or 38%, alleged only violations of the "Dignity in the Workplace" policy, a policy which prohibits offensive but not illegal conduct. The figure is a significant increase from prior years: it represents a 70% increase from 1995 levels, when OD received 71 civil rights complaints (the T did not receive "Dignity" complaints that year) and an increase of 133% from 1996 levels, when it received 52 civil rights complaints (the T received only three "Dignity" complaints in 1996). The increase in internal civil rights complaints suggests an increased awareness among employees of their rights and increased confidence in the newly revamped complaint procedure.

The 121 internal civil rights complaints included 36 allegations of harassment, 59 of discrimination, and 41 of retaliation. Some complaints alleged more than one type of violation. Twenty-one of the 121 civil rights complaints were accompanied by allegations of "Dignity" violations, bringing the total number of "Dignity" complaints to 94, since there were 73 complaints filed as "Dignity" complaints only. The T found 4 complaints of discrimination and 5 of harassment to be substantiated. The T also found 27 out of the 94 total "Dignity" charges to be substantiated. Where the civil rights complaints were found to have cause, corrective action was taken, including 3 suspensions, 1 suspension with a demotion, and 1 suspension with a transfer.

The total number of MCAD complaints filed by current or former employees during the first year of the Agreement was 51 (only 33 of which appeared to allege conduct transpiring after the Agreement), down from 76 such complaints in 1996, 59 such complaints in 1995. (See Section E(2)(e) below.) Approximately 30 of the complainants who filed internal complaints during this period also filed externally.

While there have been some lapses in the T's compliance with the Agreement's time lines for the completion of investigations (particularly in the first few months following the Agreement, as OD adjusted to the new procedures), the T's track record in this respect still represents a vast improvement over the long delays identified during this Office's investigation prior to the Agreement, which in a number of cases amounted to several years. During the first four months of implementation (February through May 1997), the T failed to complete approximately 15 investigations within the time lines, although 7 exceeded the time lines by





under a week, 5 exceeded the time lines by between one and three weeks, and the remaining 3 exceeded the time lines by between thirty-five and sixty-five days. One early instance of a delay in investigation was explained by the T as being due to the fact that the complainant also had a pending MCAD case against the T. This Office reminded the T that this was not a valid reason for taking a case outside of the time lines.

In addition, one reason identified by this Office in the spring 1997 as a contributing factor for the violations was the T's use of scarce OD resources to investigate alleged "Dignity" violations. This Office recommended to the T in the spring 1997 that it transfer the investigation of "Dignity" complaints to the Human Resources Department ("HR"). CME and the MBTA's Civil Rights Task Force also urged the T to appoint an ombudsman to handle such matters. The T agreed to do so in the spring 1997, and made plans to hire two ombudsmen and one manager of the ombuds group to handle this function. In March 1998, the ombuds manager was hired. In the interim, OD continues to investigate these complaints. Notwithstanding this fact, OD's recent track record in completing investigations within the Agreement's time lines has improved significantly, with only six cases closed after the time lines between June and September 1997, and none completed late between October 1997 and February 6, 1998.

In approximately 61, or half, of the 121 internal civil rights complaints filed during the first year, OD issued letters notifying complainants that additional time, to the outer time limit specified in the Agreement, was required to complete its investigation ("good cause" letters).

**c. Use of Qualified Investigators.** Investigators were trained by an outside consultant in investigatory techniques on March 12 through 14, 1997. Because the MBTA failed to provide this Office notice of the training in a timely manner as required by the Agreement, members of this Office did not attend. Investigators have also attended CT/E training, Managers' Policies and Procedures training, sexual harassment training and Civil Treatment on the Job ("CTOJT") training (which trains managers in handling employee complaints). Investigators hired within the past several months are scheduled for training in March and May 1998. In addition, the T reports that plans are in place to conduct a detailed training on the legal elements of harassment, discrimination and retaliation, and an overview of Chapter 151B and Title VII.

**d. Designation of 54 Supervisors Responsible for Taking Complaints.** The MBTA reported in the spring 1997 that it had made a preliminary designation of the 54 supervisors who were to take complaints on each of the T's 3 shifts and at each of its 18 principal job sites. The T was in the process of developing a training program for them. During the summer 1997, it reported that this list of designated supervisors was being revised due to the reorganization of the former Engineering and Maintenance Department. Approximately one year after signing the Agreement, the T has yet to make a final designation of these 54 supervisors, train them, and notify employees who they are. This failure is viewed by this Office as a serious lapse in the implementation of the Agreement, since until this happens, employees will not have full access to the complaint process. The ability of some employees to file a complaint has





continued to be limited by their shifts, job site assignments, and ability to leave the job site, a problem identified during the course of this Office's investigation. The T has committed itself to designating and training these supervisors by June 1998.

**e. OD Investigation When Employee Files Outside Complaints.**

The MBTA reports that it has implemented its obligation to investigate complaints filed with the MCAD, EEOC or in court alleging unlawful discrimination, harassment or retaliation within the time frames called for by Section E of the Agreement.

In the first year of the Agreement, approximately 51 new MCAD complaints were filed, 33 of which appear to allege unlawful conduct occurring after the execution of the Agreement on February 6, 1997. Of these 33, 14 allege race-based adverse action, 7 disability-based action, 10 gender-based action, 3 national origin-based action, 2 age-based action, 2 sexual harassment and 12 retaliation. (A number allege more than one basis for the complaint.) This compares with 59 such complaints filed against the T in 1995, and 76 in 1996. (These figures do not include complaints filed by non-employees, e.g., passengers, customers and applicants.)

In addition, with respect to outside lawsuits pending as of the date of the execution of the Agreement, the MBTA reports that in each such case it engaged in the required review for disciplinary purposes.

Finally, while the Agreement does not require the MBTA to actually settle lawsuits, then-General Manager (now Secretary of Transportation) Patrick Moynihan announced in the spring 1997 that the T would review its pending case load of legal complaints filed externally with an eye toward moving the cases expeditiously toward a settlement or alternative dispute resolution. The T reports that of the 111 MCAD and EEOC cases pending since the signing of the Agreement, 69 agreed to settlement negotiations or mediation and 42 declined or did not respond to the T's offer. Of the 47 cases conducted through mediation or settlement negotiations, 6 were settled, 8 were withdrawn or removed and 20 are scheduled for mediation or awaiting proposed mediators or dates.

**Paragraph F. Corrective Action and Discipline**

**1. MBTA's Duties**

Under the Agreement, the MBTA agreed to take immediate and appropriate corrective action in response to complaints of harassment, to protect the complainant from retaliation and to prevent any continuing harassment during an investigation. This provision contains the following components:

**a. Prompt and Effective Corrective Action.** The MBTA may bypass progressive discipline if an employee is found to have harassed or retaliated against another employee, and may impose immediate discipline up to and including termination. The T must



monitor the effectiveness of any corrective action taken and assure itself that the complainant is not being retaliated against by following up periodically with the complainant. Persons disciplined retain the right to grieve the discipline as permitted by any applicable collective bargaining agreement, but the arbitrator may not modify the discipline unless he or she finds that the conduct did not occur, and may not issue an award inconsistent with the anti-discrimination laws and the Agreement. The T is obligated to notify both complainants and alleged wrongdoers that they are entitled to union representation at any stage of an OD investigation.

**b. Protection of Complainant.** The MBTA may not transfer the complainant, unless he or she has requested a transfer. It may take other measures during an investigation to protect the complainant, including the temporary suspension, transfer or removal of the alleged wrongdoer, or adjustments to the professional relationship between the complainant and the respondent.

**c. Appeal of Determination of a Non-Disciplinary Nature.** A complainant may appeal OD determinations of a non-disciplinary nature, such as those involving job assignments or denial of promotions.

**d. Investigation of Anonymous or Third-Party Complaints.** Even without a formal or informal complaint, the MBTA must investigate anonymous or third-party allegations or reports of discrimination, harassment or retaliation if it has reason to believe that such conduct has occurred.

## **2. MBTA's Response**

**a. Prompt and Effective Corrective Action.** The MBTA reports that with respect to the 9 complaints of discrimination or harassment in which it found cause during the first year of the Agreement, it has taken corrective action, including 3 suspensions, 1 suspension with a demotion, and 1 suspension with a transfer. Three employees have grieved discipline implemented as a result of an OD investigation. The T denied all three, and no demands for arbitration have been filed. The T advises complainants, respondents and witnesses in its written internal complaint procedure disseminated in March 1998 that they have the right to union representation at any stage in OD's investigation, in addition to advising complainants verbally of this right at the time they file their complaint.

**b. Protection of Complainant.** In order to assure that a complainant is not transferred during the pendency of an investigation except at his or her preference, the MBTA has devised a Request for Transfer form to be signed by a complainant who wishes such a transfer. In addition, in 9 cases, OD took steps to protect the complainant during the pendency of the investigation, including 1 suspension and 8 transfers of respondents.

**c. Appeal of Determination of a Non-Disciplinary Nature.** Two harassment cases and 1 discrimination case have been appealed to the General Manager. Of





these, 2 have been decided, and the decisions were to affirm OD's findings and recommendations. Issues relating to the time frame for deciding appeals and to the appealability of decisions have not yet been resolved with the T.

**d. Investigation of Anonymous or Third-Party Complaints.** The MBTA reports that it investigated 3 anonymous complaints during the first year of the Agreement. Of these, one, an allegation of gender-based harassment, was found to have cause. The finding resulted in corrective action consisting of a five-day suspension, a performance plan and mandatory training for the respondent.

**Paragraph G. Defending MBTA Decisions**

The Agreement requires the MBTA to defend any disciplinary decisions made and corrective action taken in response to discrimination, harassment or retaliation where the discipline is challenged by the affected employee in a union arbitration or through the civil service process. It is required to seek review of any successful challenge to disciplinary or corrective action if there is a reasonable basis for doing so. As stated in Section F(2)(a) above, no employee challenged discipline imposed for discrimination or harassment in an arbitration proceeding or through the civil service process during the first year of the Agreement.

**Paragraph H. Informal Proceedings**

**1. MBTA's Duties**

The Agreement provides that OD may propose informal remedies in cases where low level, non-pervasive and non-severe forms of discrimination, retaliation or verbal or written forms of harassment are alleged, and where the alleged wrongdoer has not been subject to other complaints. Such an informal process must be agreed to by the complainant. If the proposed informal remedy is accepted by both the complainant and alleged wrongdoer, the alleged wrongdoer's supervisor must monitor the situation. If the proposed remedy is not accepted, the complainant must be encouraged to file a formal complaint, and OD may still investigate even if the complainant chooses not to do so.

**2. MBTA's Response**

The above procedures have been incorporated into the MBTA's written internal complaint procedure. During the first year of the Agreement, the T handled approximately 27 protected-class cases through this informal complaint procedure, of which 20 involved allegations of discrimination, 6 of harassment and 5 of retaliation. All but one were successful.



**Paragraph I.            Establishment of Monitoring Systems**

**1.        MBTA's Duties**

The Agreement requires the MBTA to develop, implement and maintain a system to monitor and review personnel actions to promote equal opportunity, detect disparate treatment or disparate impact affecting employees in protected classes, prevent disparate discipline based on a protected characteristic, and identify any possible instances of unlawful harassment. This provision includes the following obligations:

**a.        Identification and Remediating of Patterns of Violations.** The MBTA is to review its records to identify patterns of violations by particular employees or supervisors or at particular job sites. Where a pattern is identified, the T must take immediate corrective action, and continue to monitor the situation thereafter.

**b.        Evaluation of Employee Performance Relative to EEO Policies.** The MBTA must revise its performance evaluation forms to include a rating for the employee's compliance with the T's anti-discrimination, complaint procedure and equal employment opportunity policies. The T is required to consider whether an employee engaged in a civil rights violation or a violation of the T's policies before giving the employee a promotion, temporary change position (i.e., a temporary assignment to another position, often with an accompanying pay raise or other performance-based benefit).

**c.        Posting of Job Vacancies.** The MBTA is required to post permanent job vacancies below the level of executive management personnel beginning sixty days after the execution of the Agreement (i.e., from April 6, 1997), in a manner secured against theft.

**d.        Record-Keeping Pertaining to Discretionary Decision-Making.** The MBTA must maintain records pertaining to temporary changes, to reasonable suspicion drug and alcohol testing and resulting discipline, and to such other discretionary personnel actions as this Office has reasonably requested.

**2.        MBTA's Response**

**a.        Identification and Remediating of Patterns of Violations.** The MBTA hired an outside consultant to help it develop the computerized tracking system required by the Agreement, and expects the system to be operational by July 1998. The T has dedicated significant resources -- approximately \$1,800,000 -- toward developing and implementing this system. This Office met with the T to identify categories of information the system should track in order to be most effective. Since then, this Office reviewed a summary description of the capabilities of the system and provided input.





Pending the implementation of the computerized system, the T is manually reviewing civil rights complaints to identify patterns. As a result of its manual analysis, the T identified and responded to a pattern of complaints in the former Engineering and Maintenance Department by reorganizing that department in various stages. However, it has not conducted any specialized training at specific job sites where a comparatively high incidence of complaints has been identified, notwithstanding that this Office recommended that a training be conducted at a particular site which had been the subject of complaints. Besides being required under the Agreement, and necessary to correcting problems at difficult job sites, such trainings would tend to bolster confidence among employees that the T is dedicated to eradicating discrimination, harassment and retaliation.

**b. Evaluation of Employee Performance Relative to EEO Policies.**

This Office has been working with the MBTA to revise its management and supervisor performance evaluation form to include consideration of the manager's effectiveness in advancing the T's civil rights policies and goals. During the summer of 1997, the T provided to this Office a draft performance evaluation form which contained only one segment devoted to the evaluation of the manager's performance in this regard. This Office proposed that, since civil rights issues arise in a number of different aspects of a manager's performance, the performance evaluation form incorporate these considerations into a number of specific performance review categories. The T agreed, and is in the process of incorporating this Office's suggestions. It expects the form to be completed by July 1998, in time for the next performance review cycle. This Office has repeatedly expressed to the T its concern about the delay -- it is now approximately eight months since this Office made its recommendations -- in finalizing the form.

The T does not presently conduct performance evaluations of non-management/non-supervisory employees. In the event that the T institutes such a process, this Office and the T will discuss the development of a form which is in compliance with the Agreement.

The T has implemented a procedure requiring the Director of OD to approve all promotions in order to promote promotional opportunities for minorities and women, and in order to avoid promoting individuals with a history of demonstrated civil rights violations. In 3 cases, promotions were held up because of internal complaints against the candidates. The candidates were ultimately promoted.

**c. Posting of Job Vacancies.** Since April 6, 1997, when the posting requirement of the Agreement went into effect, through the one-year anniversary of the Agreement, approximately 160 positions were posted.

There were approximately 150 promotions made between April 6, 1997, when the posting requirement went into effect, and the first-year anniversary of the Agreement. Twenty-two of the promotions were exempt from the posting requirement as executive-level positions. Approximately 105 of the remaining 128 promotions, or approximately four-fifths, occurred as a result of posting. (With respect to 41 out of these 105 promotions, the positions were filled by



employees selected based upon their ranking at the top of the "spare list" for that position. "Spare lists" are established through a competitive process which satisfies the posting requirement, in that the process begins with a posting inviting employees to apply for inclusion on the list. Employees selected for the lists are ranked and chosen to fill vacancies in the order of rank.) Of these 105 promotions, 30, or 28.6%, went to minorities and the same number to women, when minorities comprised 29.8% and women 22.3% of the workforce.

During the summer 1997, the T informed this Office that it required the flexibility to offer promotions to certain individuals in settlement of their legal claims without posting the positions. This Office agreed to this arrangement so long as the T provided notice of when this occurred, so that this Office could verify that this very limited exception was not being misused. Four of the 128 promotions into positions which were required to be posted occurred without being posted as a result of such negotiated settlements.

The remaining 19 of these 128 promotions occurred without posting, in violation of the Agreement. They took place over the summer of 1997, in connection with the T's reorganization of the Engineering and Maintenance Department. The T not only failed to post these positions, it misrepresented in its monthly reports to this Office during the relevant period that it was in compliance with the posting requirement. This Office discovered the breach after its Civil Rights Division began probing into the effect posting was having on promotional opportunities, and also based upon information received from CME. When this Office confronted the T with the violation, the T claimed that the deviation was necessary to expedite the reorganization of the former Engineering and Maintenance Department, a hotbed of complaints, and to increase job opportunities for minorities and women in the successor departments. However, the numbers show instead that minorities received only 5, or approximately 26.3%, of these positions, and women only 2, or approximately 10.5%, of the positions filled without posting. This Office has informed the T that in the future, deviations from the posting requirement will not be tolerated and the T's monthly reports must be accurate. The T has pledged to this Office that there will be no recurrence.

A number of other issues related to the posting requirement have arisen during the Agreement's first year. At this Office's request, based upon complaints to this Office from CME and union officials that the postings were sometimes torn down, the T agreed to conduct an inspection of all posting sites and install locked display cabinets as necessary. After the inspection, the T reports that such cases will be installed at 7 facilities in addition to the 41 sites with existing cases.

In addition to posting written job announcements, the T reports that the Human Resources Department maintains an automated Job Line which may be called for information about current job postings. It is in the process of meeting with vendors in connection with a planned upgrade to include a menu which directs callers to various job categories. The upgrade is projected to be operational by the end of FY1998 (i.e., by July 1, 1998).





**d. Record-Keeping Pertaining to Discretionary Decision-Making.**

The MBTA reports that in the first year of the Agreement, there were 111 temporary changes of longer than 10 days. Of these 26, or 23.4%, were given to minorities, and 16, or 14.4%, were given to women. The T has been in the process of revising its temporary change procedures. This Office has reviewed the draft revised policy and suggested certain changes which it feels will further the T's equal employment opportunity goals and the goals of the Agreement. The temporary change selection process is important to employees, as it provides valuable experience for employees interested in promotional opportunities, and often involves an accompanying increase in pay.

With respect to reasonable suspicion drug and alcohol tests, the T reports that it performed a total of 7 such tests during the first year of the Agreement. Of the employees tested, 5 were white males, 1 was a black male, and 1 was a black female. There were 4 positive results, 3 of whom were white males and 1 of whom was a black male.

There were 197 total promotions in the first year of the Agreement, of which 61, or approximately 31%, were given to minorities (47, or approximately 24%, to black employees, 7, or approximately 3.5%, to Hispanic employees, 6, or approximately 3%, to Asian employees, and 1, or approximately .5%, to a Native American employee) and 54, or approximately 27.4%, to women.

In terms of EEO4 category (which relates to job grade in a general way), minorities received 25% (6 out of 24) of promotions at the Official/Administrator level -- the highest job category under EEOC guidelines -- and their proportion among employees within that category increased from 17.3% at the end of 1996 (when they held 13 out of 75 such positions) to 20.7% at the end of 1997 (when they held 17 out of 82 such positions). Women received 25% of promotions within this same category (again, 6 out of 24), and their proportion among employees within that category increased from 21.3% at the end of 1996 (when they held 16 out of 75 such positions) to 29.3% at the end of 1997 (when they held 24 out of 75 such positions).

With respect to the remaining EEO4 job categories, from highest to lowest, minorities received 20.3% (12 out of 59) and women 32.2% (19 out of 59) of promotions at the Professional level; minorities 26.7% (4 out of 15) and women 33.3% (5 out of 15) of promotions at the Technical level; minorities 100% (1 out of 1) and women none (0%) of promotions at the Protective Service level; minorities none and women 50% (2 out of 4) of promotions at the Paraprofessional level; minorities 27.3% (3 out of 11) and women 54.5% (6 out of 11) of promotions at the Office Clerical level; minorities 23.8% (5 out of 21) and women 19% (4 out of 21) of promotions at the Skilled Craft level; and minorities 48.4% (30 out of 62) and women 19.4% (12 out of 62) of promotions at the Service Maintenance level.

With respect to new hire statistics pertaining to the first year of the Agreement, minorities comprised 45.5% (106 out of 233), and women 36.5% (85 out of 233) of new hires. In terms of the breakdown of new hires by EEO-4 job category, minorities comprised 25% (2 out of 8) and



women 50% (4 out of 8) of new hires at the Official/Administrator level; minorities comprised 42.9% (9 out of 21) and women 57.1% (12 out of 21) of new hires at the Professional level; minorities comprised 0% and women 100% (1 out of 1) of new hires at the Technical level; minorities comprised 62.5% (15 out of 24) and women 16.7% (4 out of 24) of new hires at the Protective Service level; minorities comprised 25% (1 out of 4) and women 100% (4 out of 4) of new hires at the Paraprofessional level; minorities comprised 75% (6 out of 8) and women 62.5% (5 out of 8) of new hires at the Office Clerical level; minorities comprised 28.6% (4 out of 14) and women 7.1% (1 out of 14) of new hires at the Skilled Craft level; and minorities comprised 45.1% (69 out of 153) and women 35.3% (54 out of 153) of new hires at the Service Maintenance level.

It must be noted that the Agreement does not contain goals for the utilization of minorities and women in the T's discretionary decisions. The above data pertaining to the utilization of minorities and women in promotion and hire decisions is therefore impressive, as it demonstrates the T's commitment to equal employment opportunities for all T employees. It is also hoped and expected that the placement of minority and female employees among the T's decision-makers will result in the institutionalization and self-perpetuation of equal employment opportunity at the T.

As of the end of 1997, 29.8% (1,880 out of 6,306) of the T's employees were minorities and 22.3% (1,406 out of 6,306) were women. This is the highest composition of minority and female employees at the T in its 100-year-long history. Three years previously, at the end of 1994, minorities comprised 26.8% (1,872 out of 6,995) and women 20.8% (1,452 out of 6,995) of the workforce.

**Paragraph J.            Supervisors' Responsibility for Detection and Reporting of Violations**

**1.            MBTA's Duties**

Under the Agreement, the MBTA's supervisors share responsibility for eliminating unlawful harassment, discrimination and retaliation from the T. Supervisors must take appropriate action after learning of any such possible conduct, must document the scope and nature of any complaint, and must ensure the identification of all information reasonably related to the alleged violation and the resolution of the matter. They are subject to serious disciplinary action for failing to satisfy these requirements. The T must designate the supervisors who are to be given such responsibilities, and notify them within ninety (90) days of the execution of the Agreement.

**2.            MBTA's Response**

The MBTA has set forth the supervisors' responsibilities in its written internal complaint procedure, which was disseminated to all employees in March 1998, and in an October 14, 1997 letter from the general manager to supervisors and managers. In addition, the top 157 managers





were trained regarding their responsibilities in a workshop held on February 25, 1997, in which this Office played a leading role. The remaining managers are being trained as part of the Managers' Policies and Procedures training, which is scheduled to be completed by the end of April 1988 (see Section C above). However, the T has failed to issue to supervisors the specific designation letter required by the Agreement and so there has not been full compliance with this provision. The T expects to issue this letter by the end of May 1998.

**Paragraph K.            Responsibilities of Employees**

**1.            MBTA's Duties**

Under the Agreement, no employee of the MBTA may engage in unlawful discrimination, harassment or retaliation. All must cooperate with the T's efforts to eliminate such civil rights violations from the workplace and with the T's internal investigation process.

**2.            MBTA's Response**

The MBTA has set forth these requirements in its anti-discrimination policies and internal complaint procedure. In addition, it has been notifying employees of their responsibilities in connection with the New Hire Orientations and CT/E trainings (see Section C above). The T reports that parties and witnesses have been providing the information requested by OD in connection with its investigations.

**Paragraph L.            Confidentiality of Allegations of Complaints**

**1.            MBTA's Duties**

The Agreement requires that the MBTA make reasonable efforts to maintain the confidentiality of the allegations of complaints, complainants and alleged wrongdoers to the extent possible.

**2.            MBTA's Response**

The MBTA reports that it has been complying with this provision. In addition, the T has included a commitment to safeguard confidentiality in both its internal complaint procedure and in the Authorization for Investigation Form which OD asks complainants to sign.

**Paragraph M.            Access to Personnel File**

**1.            MBTA's Duties**

The Agreement includes a provision covering the right of employees to review their personnel files under the Agreement and Massachusetts law. The Agreement stipulates that the



T will charge no more than \$.20 per page when copies are requested.

**2. MBTA's Response**

The MBTA reports that it is complying with this provision.

**Paragraph N. Back to Work Agreements**

**1. MBTA's Duties**

The MBTA agreed in this provision that no "back to work" or "work resumption" agreement presented to an employee shall contain a waiver of rights to file a claim of unlawful discrimination, harassment or retaliation with the MCAD, EEOC or in court, or require an employee to withdraw such a complaint filed with OD.

**2. MBTA's Response**

The MBTA reports that this aspect of the Agreement is in place.

**Paragraphs O through S**

Paragraphs O through S concern the interpretation and amendment and modification to this Agreement, and other such provisions which do not impose specific substantive obligations on the MBTA relative to its dealings with employees.







